

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35546

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 486S
)	
Plaintiff-Respondent,	)	Filed: July 10, 2009
)	
v.	)	Stephen W. Kenyon, Clerk
)	
RICHARD SNYDER,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
)	
	)	SUBSTITUTE OPINION
	)	THE COURT'S PRIOR OPINION
	)	DATED JUNE 3, 2009, IS
	)	HEREBY WITHDRAWN
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge. Hon. A. Marvin Cherin, Magistrate.

Order of the district court, on appeal from the magistrate, affirming judgment of conviction for speeding, affirmed.

Richard Snyder, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Richard Snyder appeals from the district court's order, on intermediate appeal, affirming his judgment of conviction for speeding. For the reasons set forth below, we affirm.

Snyder was cited for speeding after a police officer visually observed that Snyder's vehicle appeared to be exceeding the speed limit and used a laser speed detection device which measured the speed of Snyder's vehicle at 65 mph in a 55 mph zone. I.C. § 49-654(2). Snyder contested the charge at a trial before the magistrate. The magistrate found Snyder guilty based on testimony from the police officer that he observed Snyder speeding and measured his vehicle's excessive speed with the laser device. Snyder appealed to the district court, alleging

numerous errors by the magistrate. The district court affirmed Snyder's judgment of conviction, holding that a discrepancy in the date of the offense was not preserved for appeal and was not an element of the offense; the magistrate properly excluded Snyder's evidence under the Idaho Rules of Evidence; Snyder failed to preserve his objection to the admissibility of the officer's testimony on the laser readings; the magistrate properly excluded literature offered by Snyder because no foundation had been laid for admission and it was hearsay; the evidence was sufficient to support Snyder's conviction; and, a break in the trial recording, immediately preceding the magistrate's oral ruling, did not mandate dismissal. Snyder again appeals.

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *State v. DeWitt*, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). We examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *Id.* If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure. *Id.*

At the conclusion of his trial, the magistrate found Snyder guilty of violating I.C. § 49-654(2). The trial recording abruptly ended immediately prior to the magistrate issuing its oral findings. However, the magistrate indicated its findings and signed the reverse side of the citation. The magistrate further clarified its findings by a written order entered after the omissions in the recording became apparent. Idaho Code Section 49-654(2) provides that, "where no special hazard or condition exists . . . no person shall drive a vehicle at a speed in excess of the maximum limits."

At trial, the officer testified that he observed Snyder's vehicle come around a bend in the road and it appeared that he was speeding. The officer used his laser device and determined that Snyder's vehicle was, in fact, travelling 65 mph in a 55 mph zone. Snyder also testified and contended that he was only going 55 mph and that the laser device was unreliable or otherwise gave an erroneous reading because his car was wet from driving through some sprinklers. The magistrate called the officer back to the stand and asked him whether, in his experience, a wet car would change the accuracy of the reading. The officer responded that moisture on the surface of the car would not affect the laser's accuracy. Therefore, there is substantial and

competent evidence in the record supporting the magistrate's factual finding that Snyder violated I.C. § 49-654(2).

Snyder argues that the magistrate impermissibly testified at his trial. He further contends that the district court did not address this issue in its order affirming Snyder's judgment of conviction. We will not consider whether the district court erred by not considering this issue on intermediate appeal, because Snyder's argument is without merit. Error is not reversible unless it is prejudicial. *State v. Stoddard*, 105 Idaho 169, 171, 667 P.2d 272, 274 (Ct. App. 1983). Therefore, even if the district court committed error, we conclude it would not require reversal in this case.

At trial, the officer testified that rain or specific moisture could affect the laser reading. During Snyder's testimony, he asked if he could show a photograph of his vehicle to show it was wet at the time he received the speeding citation. The magistrate responded: "You know, that's really irrelevant because it's the moisture that's in the air that affects it, the air between the laser and you. It's not what's on your car that affects it." Snyder then argued that it affected reflective surfaces, but admitted he did not have any admissible proof of that. To clarify this issue, the magistrate recalled the officer to the stand and the following exchange occurred:

[MAGISTRATE]: In your training in using this thing, I know -- and you also testified that weather can affect the use of the laser, would it affect a wet vehicle? Would that affect the reflectivity or is it the moisture in the air that affects it?

[POLICE OFFICER]: It would be the moisture in the air that would affect it. The moisture on his vehicle wouldn't.

[MAGISTRATE]: So if a car came out of a car wash?

....

[MAGISTRATE]: You'd still get an accurate reading with it?

[POLICE OFFICER]: Yes.

We conclude that the magistrate did not testify at the trial when addressing the relevance of Snyder's proffered photograph. Therefore, the magistrate did not exceed the bounds of its authority in recalling the officer and questioning him about the effect that moisture on Snyder's vehicle would have on the accuracy of the laser reading.

The majority of Snyder's arguments on appeal revolve around the sufficiency of the evidence against him due to his allegation that the reading of the laser speed detection device was inaccurate as a result of misuse, lack of proper calibration, moisture on the surface of his

vehicle, or other conditions that resulted in an incorrect measurement. Snyder contends that the state failed to offer any evidence as to the reliability of the laser device and that, therefore, the magistrate erred by accepting its speed measurement. This showing of reliability is not required, and this Court has previously held that speed measurements from laser devices are generally reliable. *State v. Williamson*, 144 Idaho 597, 600, 166 P.3d 387, 390 (Ct. App. 2007). To lay a proper foundation for admissibility, the state must prove that the officer was qualified to operate the device, that the unit was properly maintained, and that it was used correctly. *Id.* This foundation was not explicitly laid during the state's direct examination of the police officer. However, the officer's qualification to operate the device, its testing and maintenance, and the officer's use of the device, were adequately addressed through Snyder's very thorough cross-examination. Therefore, at the conclusion of the evidence, the magistrate did not err by considering the results of the laser device in finding that Snyder had violated I.C. § 49-654(2).

Snyder argues that the district court erred by dismissing several of his claims because they were not properly preserved by an objection below. He contends that he did object through his contrary testimony and questioning of the police officer on cross-examination. Snyder misunderstands what a trial objection entails. Under I.R.E. 103(a)(1), a party opposing proffered evidence must make a timely objection stating the specific ground of objection unless the specific ground is apparent from the context. *State v. Vondenkamp*, 141 Idaho 878, 885, 119 P.3d 653, 660 (Ct. App. 2005). An objection on one ground will not preserve a separate and different basis for excluding the evidence. *Id.* Snyder offered no specific objections and his contrary testimony and skeptical questioning of the officer do not make a specific, formal objection contextually apparent. Therefore, the issues were not properly preserved for appeal.

Snyder next argues that his ability to exercise his right to appeal and his right to due process were violated because the trial recording ended prematurely. When the transcript irregularity was raised on intermediate appeal, the district court remanded to the magistrate to enter written findings of fact, which provide.

Based upon all the testimony, the court finds that on May 16, 2007, [Snyder] committed a traffic infraction of speeding . . . by operating a motor vehicle at a speed of 65 miles per hour in a posted 55 mile per hour zone in violation of Idaho Code 49-654-2.

Upon review of the magistrate's findings, the district court correctly observed:

In this case, there is no question that the Magistrate entered judgment against Snyder as demonstrated by the signature on the ticket itself. Furthermore, Snyder does not contend that the transcript of the actual trial fails to accurately reflect what occurred. The only thing missing was the Magistrate's oral pronouncement of judgment and fines.

The magistrate's written findings of fact were sufficient and their entry after the trial is of no consequence. Thus, the premature ending of the trial recording did not result in any error or prejudice to Snyder's rights.

Snyder makes many other arguments throughout his brief. We have reviewed Snyder's brief and the record in this case and conclude that all other arguments raised by Snyder are meritless, unfounded, not properly before this Court, or unsupported by adequate argument or authority. A party waives an issue on appeal if either authority or argument is lacking. *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Therefore, we need not address them further.

The magistrate's factual findings were supported by substantial and competent evidence in the record. Snyder raises no errors meriting reversal. The district court affirmed the magistrate's decision. Accordingly, the district court's order, on intermediate appeal, affirming Snyder's judgment of conviction for speeding is affirmed.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**